

No 14/13/87-6 Lab/709 —In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Gabriel India Ltd., Gurgaon *Versus* Sanjay Kumar.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, GURGAON.

Reference No 399 of 89.

Between

SANJAY KUMAR S/O SHRI OM PARKASH C/O SHRI SHARDHA, NAND, GENERAL SECRETARY, AITUC OFFICE 214/4 MARLA, GURGAON AND

Versus

THE MANAGEMENT OF M/S GABRIEL INDIA LTD, CHANDER NAGAR, GURGAON.

Present :

Shri Shardha Nand for the workman.

Shri M. P. Gupta for the management.

AWARD

1. If exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication, *vide* Haryana Govt. Labour Deptt. Endorsement No. 48491-96 dated 23rd October, 1989 :—

"Whether termination of services of Shri Sanjay Kumar is legal and just ? If not, to what relief is he entitled ?

2. The facts given out in the claim statement are that the petitioner was employed as Sweeper by the management on 1st April, 1988 on monthly salary of Rs. 625/- and his services were terminated orally on 14th June, 1989. It was pleaded that neither any appointment letter was given nor any compensation was paid.

3. In response to the notice, management appeared and filed their written statement and took up the plea that work was given to a private agency on contract basis so as to ensure the efficiency in the production and the management had given the cleaning and security work on contract basis and Sanjay Kumar petitioner was working as a Sweeper and he was an employee of the contractor namely M/s Prompt Security Services and the petitioner was never paid by the management and the relationship of employer and employee did not exist. It was pleaded that contribution under the ESI Act were being deducted by the contractor and paid to the corporation and it was a separate entity. therefore, reference in the present form was not maintainable.

4. In the replication, contents of the written statement were controverted, while those of the claim statement were reiterated.

5. On the pleadings of the parties, following issue was framed on 8th June, 1990 :—

"Whether termination of services of Shri Sanjay Kumar is legal and just ? If not, to what relief is he entitled ?

6. I have heard authorised representatives of the parties. My finding on the issue framed is as under :—

7. The management had led its evidence first and they have examined Deverder Kumar, who was working as Office Assistant in Prompt Security Service. He brought attendance register, wages register, P.F. registration under the ESI Act and Shop Act. He deposed that *vide* letters Ex. M1 Ex. M2 and Ex. M3 Prompt Security Service was registered under the Shop Act and the ESI Act and they had taken the contract from M/s Gabriel India and they had been providing labour to the company and the petitioner was in their service from 1st March, 1989 to 13th June, 1989. He proved the copy of the attendance register Ex. M5 and Ex. M6. He stated that he had brought the record prior to March 1989, but name of the petitioner was not mentioned therein. He stated that payment for the month of March 1989 had been made. He also proved photocopies of the register Ex. M7 to Ex. M9. He stated that the petitioner was never employed by the management. In the cross examination, he has admitted that whenever any workman was employed,

appointment letter was given and appointment letter had also been given to the petitioner, but he had not brought copy of the same.

8. A. L. Tanoja MW 2 deposed that he had entered into a contract with M/s Gabriel India for security and sweeping arrangement and an agreement was executed. He proved the copy Ex. M10. He stated that Sanjay Kumar was under their employment since March 1989, and he started absenting himself from 13th June, 1989. He stated that no appointment letter was issued to the workman and wage slip had been prepared and they had not written any letter calling upon the workman to show cause for his absence.

9. On the other hand, Sanjay Kumar examined himself as WW 1. He stated that his services were illegally terminated on 14th June, 1989 and he was getting salary of Rs. 625/- p.m. and he had worked continuously from 1st April, 1988 to 14th June, 1989 and no appointment letter, ESI card was given, nor any compensation was paid. He denied that he was an employee of Prompt Security Service.

10. Sube Singh WW 2 stated that he was working with the respondent namely M/s Gabriel India Ltd., and the petitioner was the General Secretary of the union. He stated that Sanjay Kumar was working as a Sweeper w.e.f. 1st April, 1988 and he was employed by the company and not by the contractor and he was receiving pay from the management.

11. Thereafter, an application was moved for additional evidence by the management, which was allowed and the management had examined Sibban, UDC in the ESI Office, who brought the ESI declaration form and deposed that the code number of the employer was mentioned at point "A" of the declaration form Ex. MW 3/1 and it pertained to Sanjay Kumar S/o Giasi Ram.

12. H. K. Jain MW 4 brought the register from January 1988 to December, 1991 and deposed that Sanjay Kumar S/o Giasi Ram, ESI code number 6101602 had never worked with the management and he was an employee of Prompt Security Service and they had never paid any wages. He stated that there was one other employee by the name of Sanjay Kumar whose father's name was Ram Avtar, who had worked from April 1988 to January 1989, and his ESI number was 5516637. He stated that he had brought the payment register and it was correct that they had never obtained the signatures of the employee on their register but the signatures were obtained on the payment sheet, which he had not brought.

13. The argument made on behalf of the management was that since the petitioner was an employee of the contractor M/s Prompt Security Service, therefore, he could not be treated as an employee of Principal employer. Reference was made to various documents produced on the file namely Ex. M1 to Ex. M4 to show that M/s Prompt Security Service was enrolled as an establishment under the Shop and Establishment Act and ESI Act. Reference was made to the copies of the attendance register to show that the presence of Sanjay Kumar was shown in the attendance register of the contractor and he had worked upto 14th June, 1989 and thereafter he did not turn up even for the payment due for the month of June, 1989. Reference was also made to Ex. M10 agreement of contract between Prompt Security Service and the respondent. In addition evidence, the management had introduced declaration from Ex. MW. 3/1 and it was pointed out by the A.R. for the management that the code of M/s Prompt Security Service had been given an signatures of Sanjay Kumar S/o Shri Giasi Ram had been put of the back side of form. It was argued that two person by the name of Sanjay Kumar were working and one of them was employee of the management while other was employee of M/s Prompt Security Service. Their percentage has also been given in the declaration form.

14. On the other hand, it was argued on behalf of the petitioner that it has been admitted that the petitioner was working as a Sweeper with the management, but they have failed to prove that the petitioner was an employee of M/s Prompt Security Service as percentage of the petitioner does not tally with the one given in the declaration form and other documents. It was argued that documents Ex. M1 to Ex. M3 do not relate to the case of the petitioner and agreement Ex. M10 also does not relate to the case of the petitioner as he was not an employee of the contractor. It was pointed out that in the declaration form Ex. MW3/1 the father's name is written as Gissi Ram whereas, father's name of the petitioner is Om Parkash. It was argued that since the petitioner was in continuous service for over 240 days and an retrenchment compensation or notice had been given, therefore, his retrenchment was illegal and the petitioner was liable to be reinstated with full back wages.

15. No doubt, an agreement had been entered into between M/s Prompt Security Service and M/s Gabriel India Ltd. for supply of casual labour and M/s Prompt Security Service was an establishment under the Shop act and the Employees Provident Fund Act of 1952.

16. According to the management Sanjay Kumar S/o Giasi Ram was an employee of M/s Prompt Security Service, who was working with the management and his record in the shape of ESI declaration form, and copies of the attendance register have been produced on the file, but here before this court, it is Sanja Kumar S/o Om Parkash who is the petitioner. The management this case has admitted that petitioner was working as a Sweeper with them, in that case, it was the management who was to show that it was the petitioner, was an employee of M/s Prompt Security Service. They have failed in this regard as the person, who

was engaged as an employee by M/s Prompt Security Service one Sanjay Kumar S/o Giasi Ram The entire record was with the management and they have purposely withheld the same. They have miserably failed to prove on the record the plea set up by me them. Admittedly, no notice or retrenchment compensation as envisaged under Section 25F of the Act was paid. The plea taken up by the petitioner in the circumstances has to be accepted. According to the petitioner, he was working with the management from 1st April, 1988 till 14th June, 1989 without any break. Therefore, it can safely be held that the petitioner had completed 240 days and since compliance of Section 25F of the I.D. Act, 1947 had not been made, therefore, termination of services of the petitioner in this case is illegal and unjustified. The petitioner is entitled to reinstatement with continuity of service and full back wages. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 28th September, 1994.

Endorsement No. 1447 dated 30th September, 1994.

Forwarded (four copies) to the Secretary to Govt. Haryana, Labour & Employment Departments, Chandigarh under Section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The September, 1994

No. 14/13/87-6 Lab./739.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. Chief Conservator of Forest, Haryana, Chandigarh *versus* Karambir.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Ref. No. 321 of 1990

Date of receipt .. 20-3-90

Date of decision .. 1-9-94

SHRI KARAMBIR SON OF SHRI TEK CHAND, VILLAGE BRAHMANWALA BHANA,
P.O. GURTHALI, TEHSIL NARWANA, DISTRICT JIND.

Applicant

versus

1. CHIEF CONSERVATOR OF FOREST, HARYANA, CHANDIGARH.
2. DISTRICT FOREST OFFICER, SOCIAL, HISAR.
3. RANGE OFFICER, FOREST, HISAR.

Respondent-management

Present:—

Shri Darshan Singh, for the workman.

Shri Sita Ram, ADA, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute, between

Karambir and the above mentioned management, for adjudication to this Court,—vide Labour Department letter No. Hsr/278-89/9850—57, dated 7th March, 1990:—

Whether termination of services of Shri Karambir is justified and in order ? If not, to what relief, is he entitled ?

2. According to the workman, he was appointed as Beldar in the year 1986 and that his services were terminated by the management on 6th September, 1989, in an illegal manner, in violation of the provisions of Section 25-F and Section 25-G of the Act. He therefore, prayed for re-instatement with full back wages and other consequential benefits.

3. The management, in its written statement, pleaded that the petitioner was engaged on daily wages, as per requirement of the work and when the work was over, the services of the petitioner were terminated. The management further stated that the petitioner is not entitled to any relief, as they have not violated any provision of the Act.

4. On the pleadings of the parties, the following issues were framed on 15th October, 1990 by my learned predecessor :—

1. As per terms of reference.
2. Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri Darshan Singh, Authorised Representative of the workman and Shri Sita Ram, A.D.A. on behalf of the management and have gone through case file. My findings on the above issues are as under :—

Issue No. 1.

6. Karambir, workman appeared as WW-1 and has stated that he was appointed as Beldar in 1935 and his services were terminated on 6th September, 1989, without giving him any notice and without payment of any retrenchment compensation.

7. The management examines Shri Phool Singh, Forester, who stated as MW-1 that the petitioner was appointed in 1986 as Beldar. He admitted in his cross-examination that the petitioner had completed 240 days service.

8. Admittedly, the petitioner had worked for 240 days and thus, he was protected under the provisions of Section 25-F of the Act. The management was duty bound to comply with the provisions of Section 25-F of the Act at the time of terminating his services. The management did not do so. The non compliance of mandatory provisions of Section 25-F of the Act, has thus rendered the termination of services of the petitioner, as illegal and the petitioner is not only entitled to reinstatement, but full back wages and other consequential benefits and benefit of continuity of services also. The issue is answered accordingly in favour of the workman.

Issue No. 2-Relief

9. In view of my findings on the above issue, the termination of services of the petitioner is held illegal. The same is hereby set-aside. The petitioner is reinstated in the same post forthwith, with full back wages and benefit of continuity of service and other consequential benefits. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

The 1st September, 1994.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endst. No. 2078, dated 9th September, 1994.

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.